

# **CITY OF FLAGSTAFF**

## **REQUEST FOR PROPOSALS**

**PRODUCT AND OR SERVICES:** ONLINE PERFORMANCE MANAGEMENT

**PROPOSAL NUMBER:** 2014-30

**PROPOSALS DUE NO LATER THAN:** 3:00 P.M., DECEMBER 19, 2013

**RFP OPENING LOCATION:** *City of Flagstaff  
Management Services-Purchasing Division  
211 West Aspen Ave.  
Flagstaff, AZ 86001  
(928) 213-2206/Fax (928) 213-2209*

In accordance with the Charter for the City of Flagstaff in Flagstaff, Arizona ("City") and by Arizona State Statute, competitive sealed offers for the products or services specified will be received by the City at the above specified location, until the time and date cited. Offers received by the correct time and date will be opened and the name of each Proposer will be publicly read.

Offers shall be in the actual possession of the City, at the location indicated, on or prior to the exact time and date indicated above. Late offers shall not be considered.

Offers must be submitted in a sealed envelope with the REQUEST FOR PROPOSAL name and number and the Proposer's name and address and the RFP closing date and time clearly indicated on the envelope. All offers must be completed in ink or typewritten. Additional instructions for preparing a proposal response are provided herein.

PROPOSERS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE REQUEST FOR PROPOSAL.

<b>Buyer:</b>	<u>Candace Schroeder</u>
<b>Phone Number:</b>	<u>(928) 213-2278</u>
<b>Fax Number:</b>	<u>(928) 213-2209</u>
<b>E-mail Address:</b>	<u><a href="mailto:cschroeder@flagstaffaz.gov">cschroeder@flagstaffaz.gov</a></u>
<b>Date:</b>	<u>November 20, 2013</u>

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## ACKNOWLEDGMENT OF RECEIPT

**RFP ISSUE DATE:** November 20 , 2013

**PRODUCT AND/OR SERVICES:** ONLINE PERFORMANCE MANAGEMENT

**PROPOSAL NO.:** 2014-30

**QUESTIONS MUST BE RECEIVED BY:** December 5, 2013

**OFFER DEADLINE:** 3:00 P.M., on December 19, 2013

Please complete and return the requested information below via Fax to the City of Flagstaff Purchasing Office at (928) 213-2209 or by mailing, in order to acknowledge receipt and to **receive notification of any addenda or responses to questions regarding this RFP**. Proposals from companies or individuals not acknowledging the addenda may be considered incomplete, non-responsive and potentially subject to disqualification.

Name of Company  
or Individual: \_\_\_\_\_

Name / Title of Contact: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Phone #:** (     ) \_\_\_\_\_ **Fax #:** (     ) \_\_\_\_\_

**E-Mail**  
**Address:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## NO RESPONSE FORM

Product and/or services: Online Performance Management

Proposal Number: 2014-30

**Proposers not responding to this solicitation are asked to complete this form. Please return this form to the address listed above or fax to (928) 213-2209.**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

*Reason for NO OFFER:*

- ☐ Do not handle product/service
- ☐ Unable to respond due to current staff availability and/or business conditions
- ☐ Insufficient time
- ☐ Unable to meet terms, conditions, specifications or requirements as described within the solicitation due to:

\_\_\_\_\_  
\_\_\_\_\_

☐ Other: \_\_\_\_\_

This *NO OFFER* response is authorized by: \_\_\_\_\_

Signature

\_\_\_\_\_  
Title

- Please check one:
- ☐ Retain our company on the mailing list for future solicitations.
  - ☐ Please remove our company from the mailing list.
  - ☐ Please remove our company from this commodity or service only.

## INSTRUCTIONS TO PROPOSERS

1. **PURPOSE:** Pursuant to provisions of the City Charter, as well as provisions contained in this document, the City intends to establish a contract for:

### **ONLINE PERFORMANCE MANAGEMENT**

The City is seeking proposals from qualified Proposers to provide consulting services for the City's Flagstaff Human Resources and IT Division. The successful Proposer shall be an approved Proposer for the equipment or services being recommended and shall provide a letter from the appropriate company or individual with a statement to that effect.

2. **PREPARATION OF PROPOSAL:**

- a. Forms: All Offers shall be on the forms provided in this RFP Package. The RFP Package shall consist of all documents listed in the Table of Contents. It is permissible to copy these forms if required. Facsimiles, telegraphic Offers or mailgrams will not be considered.
- b. Evidence of Intent to be Bound: The Offer document must be submitted with an original ink signature by the person authorized to sign the Offer.
- c. Typed or Ink; Corrections: The Offer must be typed or in ink. Erasures, interlineations or other modifications in this RFP document shall be initialed in ink by the authorized person signing the Offer. No Offer shall be altered, amended or withdrawn after the specified RFP due time and date.
- d. Unit Price Prevails: In case of error in the extension of prices in the Offer, unit price shall govern.
- e. Days: Periods of time, stated as a number of days, shall be calendar days, unless otherwise specified.
- f. Duty to Examine: It is the responsibility of all Proposers to examine the entire RFP Package and seek clarification in writing of any item or requirement that may not be clear and to check all responses for accuracy before submitting a proposal. Negligence in preparing an Offer confers no right of withdrawal after due time and date.
- g. Submittal: All Offers must be clearly marked: **ONLINE PERFORMANCE MANAGEMENT, RFP NO.2014-30**, your name or company name and the closing date and time of this RFP on the outside of the sealed envelope. Proposals shall be provided in three ring binders with **ONE (1) ORIGINAL AND FIVE (5) COPIES** of the proposal included.

3. **RESPONSIVENESS AND QUALITY OF PROPOSAL:** The responsiveness and quality of the proposal(s) submitted by the Proposer are viewed as a basic indication of the Proposer's general capability and technical competence. The City will review the proposal for: (1) completeness, (2) thoroughness, (3) accuracy, (4) compliance with proposal instructions, and (5) the organization and conciseness of descriptive text material. Proposals that do not comply with instructions may be eliminated from further consideration.

4. **GENERAL CONTENT:** The proposal submitted should be specific and complete in every detail. It should be practical and should be prepared simply and economically, providing a straight-forward, concise delineation of capabilities to satisfactorily perform the proposal being sought. Proposers should not necessarily limit the proposal to the performance of the

service in accordance with this document but should outline any additional services and their costs if deemed necessary to accomplish the scope of services.

- 5. INQUIRIES:** Any question(s) related to this RFP shall be directed to the Buyer whose name appears at the bottom of the front page of this document. Questions should be submitted in writing when time permits. Proposers shall not contact or ask questions of the department for which the requirement is being procured. The City **shall not** be responsible for Proposers adjusting their proposal based on any oral instructions made by any employees or officers of the City. All changes to the RFP shall be in the form of a written addendum, which shall be furnished to all Proposers who are listed with the City as having received the original RFP.

The City shall not respond to any requests for information pertaining to specifications received less than five working days (Monday–Friday, excluding holidays) before the proposal opening. Any interpretation or correction of the RFP documents shall be made only by written addendum and a copy of each addendum shall be mailed, faxed or delivered to all who have returned an Acknowledgement of Receipt form. The City shall not be responsible for any other explanations or interpretations of the RFP Package.

The Buyer may be required to submit any and all questions in writing at the City's sole discretion. Any correspondence related to a solicitation shall refer to the appropriate solicitation number, page and paragraph number. However, the Proposer shall not place the solicitation number on the outside of an envelope containing questions, since such an envelope may be identified as a sealed RFP and may not be opened until after the official RFP due date and time.

- 6. LATE PROPOSAL:** Late proposal responses shall not be considered. A Proposer submitting a late proposal shall be so notified.
- 7. WITHDRAWAL OF PROPOSAL:** At any time prior to a specified solicitation due time and date a Proposer (or designated representative) may withdraw the Proposal. Facsimile, telegraphic or mailgram withdrawals shall not be considered.
- 8. AMENDMENT OF PROPOSAL:** The Proposer shall acknowledge receipt of a Solicitation Addendum by signing and returning the Addendum form, along with the proposal response prior to the specified due time and date. Failure to return a signed copy of a material solicitation amendment or to follow the instructions for acknowledgment of the solicitation amendment shall result in rejection of the proposal.
- 9. PAYMENT:** A separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material, service or construction and a correct invoice. The City's agreement for payment terms is **NET 30**, unless the Proposer offers discounted terms.
- 10. DISCOUNTS:** Payment discount periods shall be computed from the date of receipt of material/service or correct invoice, whichever is later, to the date the City's warrant is mailed. Unless freight and other charges are itemized, any discount provided shall be taken on full amount of invoice. Payment discounts of ten (10) calendar days or more shall be deducted from the proposal price in determining the low proposal. However, the City shall be entitled to take advantage of any payment discount offered by the Proposer provided payment is made within the discount period.
- 11. TAXES:** The City is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, as required, shall be indicated as a separate item.

**12. EVALUATION AND AWARD OF CONTRACT:**

- a. Unless the Proposer states otherwise, or unless otherwise provided within the RFP, the City reserves the right to make multiple awards or to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City. The contract shall be awarded to the lowest responsive, responsible Proposer whose proposal is the most satisfactory and advantageous to the City based on the factors set forth in the RFP Package. The City shall be the sole judge as to the acceptability of the products or services offered.
- b. Notwithstanding any other provision of the RFP Package, the City expressly reserves the right to:
  - (1) Waive any immaterial defect or informality; or
  - (2) Reject any or all Offers, or portions thereof; or
  - (3) Cancel/Reissue an RFP.
- c. All responses to this RFP are offers to contract with the City and shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the RFP Package, including the Agreement. Offers do not become contracts unless and until they are formally accepted by the City. If the value of the services or goods in the Proposal is \$50,000 or less, a contract will be formed when the City Manager accepts, in writing, the Proposer's Offer. Once the Agreement is fully executed, it will be the final and binding contract between the Proposer and the City. The Agreement may incorporate some or all of the RFP Package.
- d. The City reserves the right to clarify any contractual terms with the concurrence of Proposer, however, any substantial non-conformity in the Offer shall be deemed non-responsive and the Offer rejected. No alteration of any contract resulting from an Offer may be made without the express written approval of the Director of Purchasing in the form of an official contract amendment.

**13. ENVIRONMENTAL PROCUREMENT POLICY:** The City has established an Environmental Procurement Policy which encourages the purchase of the most environmentally responsible products and services available to meet the intended purpose. We encourage the offer of alternatives that increase the environmental responsibility of the products or services called for in this solicitation.

**14. SALES TAX:** The City will not pay any taxes on invoices received unless an Arizona Transaction Privilege License Number or Arizona Use Tax Number and, if applicable, a City Sales Tax Number are listed below. The City will figure applicable taxes to offers received from out of state Proposers who do not list an Arizona Use Tax number for tabulation and total cost evaluation.

Arizona Sales Tax Number: \_\_\_\_\_

Arizona Use Tax Number: \_\_\_\_\_

City of: \_\_\_\_\_

Sales Tax Number: \_\_\_\_\_

Refer to the following to determine if the freight or delivery charges are taxable:

Delivery charges are considered non-taxable and exist only when the total charges to the ultimate customer or consumer include, as separately charged to the ultimate customer, charges for delivery to the ultimate consumer, whether the place of delivery is within or without the City, and when the taxpayer's books and records show the separate delivery charges. **Delivery charges if separately stated are considered to be non taxable.**

Freight charges for delivery from place of production or the manufacturer to the Proposer either directly or through a chain of wholesalers or jobbers or other middlemen are deemed "freight-in" and are not considered delivery. **Freight-in charges are taxable.**

**15. NON-COLLUSION:** The Proposer shall sign a non-collusion affidavit.

## STANDARD TERMS AND CONDITIONS

The following terms and conditions are an explicit part of the solicitation and any offer received by a Proposer in response to this RFP.

1. **CERTIFICATION:** By signature on the Offer page, at the end of this RFP document, Proposer certifies that:
  - a. The submission of the Offer did not involve collusion or other anti-competitive practices.
  - b. Proposer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in the rejection of the Offer. Signing the Offer, on page 33 of this RFP document, with a false statement shall void the Offer and any resulting contract and may be subject to penalties provided by law.
2. **GRATUITIES:** The City may, by written notice to the Proposer, cancel any resulting contract if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Proposer or any agent or representative of the Proposer, to any officer or employee of the City with a view toward securing a contract, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such contract. In the event any resulting contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Proposer the amount of the gratuity.
3. **OFFER BY PROPOSER:** All responses to this RFP are offers to contract with the City and shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the RFP Package, including the sample Agreement. Offers do not become contracts unless and until they are formally accepted by the City. Formal acceptance may occur when the City Manager accepts an Offer, or when the City Council accepts the Offer and enters into the Agreement, as allowed under the Flagstaff City Charter. The City reserves the right to clarify any contractual terms with the concurrence of Proposer, however, any substantial non-conformity in the Offer shall be deemed non-responsive and the Offer rejected. A contract approved by the City Council may only be changed by written amendment signed by duly authorized representatives of the City and the Proposer.
4. **EXCEPTION TO THE SOLICITATION:** Proposer shall identify and list all exceptions taken to all sections of this RFP Package and list these exceptions referencing the section (paragraph) where the exception exists, identifying the exceptions and the proposed wording for Proposer's exception. Proposer shall list these exceptions under the heading "Exception to the PROPOSAL Solicitation." Exceptions that surface elsewhere and that do not also appear under the heading "Exception to the Proposal Solicitation," shall be considered invalid and void and of no contractual significance. The City reserves the right to reject, render the proposal non-responsive, enter into negotiation on any of the Proposer exceptions, or accept them.
5. **INTERPRETATION - PAROL EVIDENCE:** The Agreement is intended by the parties as a final expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Acceptance or acquiescence in a course of performance rendered under the Agreement shall not be relevant to determine the meaning of the contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object. Whenever a term defined

by the City Charter or applicable Arizona State Statute is used in the Agreement, that definition shall control.

6. **RIGHTS AND REMEDIES:** No provision in this document or in the RFP Packet shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract.
7. **PROTESTS:** Protests shall be resolved, in accordance with the following: A protest shall be in writing and shall be personally delivered or served upon the City Purchasing Director. A protest of a solicitation shall be received at the City Purchasing Department before the solicitation opening date. A protest of a proposed award or of an award shall be personally delivered or served upon the City Purchasing Director within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:
  - a. The name, address and telephone number of the protester;
  - b. The signature of the protester or its representative;
  - c. Identification of the solicitation or contract number;
  - d. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
  - e. The form of relief requested.
8. **ADVERTISING:** Proposer shall not advertise or publish information concerning the solicitation or the Agreement, without the prior written consent of the City.
9. **RIGHT TO INSPECT PLANT:** The City may, at reasonable times and at its expense, inspect the plant or place of business of a Proposer or Sub-proposer which is related to the performance of any contract as awarded or to be awarded.
10. **INSPECTION:** All materials, services or construction are subject to final inspection and acceptance by the City. Materials, services or construction failing to conform to the specifications of the contract shall be held at Proposer's risk and may be returned to Proposer. If so returned, all costs shall be the responsibility of Proposer.
11. **PURCHASE ORDERS:** The City shall issue a purchase order for the goods or services covered by the contract. All such purchase orders will reference the contract number, as well as the City Council approval date and Council Agenda item number.
12. **PACKING AND SHIPPING:** If applicable, Proposer shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.
13. **TITLE AND RISK OF LOSS:** The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, and the City has completed inspection and has accepted the material, unless otherwise provided within the contract.
14. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials, or services, must fully comply with all provisions of the contract. If a tender is made which does not fully conform, this shall constitute a breach and Proposer shall not have the right to substitute a conforming tender without prior approval from the City.

- 15. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Proposer shall deliver conforming materials, or services, in each installment or lot of the contract and may not substitute nonconforming materials, or services. Delivery of nonconforming materials, and/or services, or a default of any nature, at the option of the City, shall constitute a breach of the contract as a whole.
- 16. SHIPMENT UNDER RESERVATION PROHIBITED:** Proposer is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.
- 17. LIENS:** All goods, services and other deliverables supplied to the City under the Agreement shall be free of all liens other than the security interest held by Proposer until payment in full is made by the City. Upon request of the City, Proposer shall provide a formal release of all liens.
- 18. LICENSES:** Proposer shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by Proposer as applicable to the Agreement.
- 19. COST OF PROPOSAL PREPARATION:** The City shall not reimburse the cost of developing, presenting or providing any response to this solicitation. Proposals submitted for consideration by the City should be prepared simply and economically, providing adequate information in a straightforward and concise manner.
- 20. CONFIDENTIAL INFORMATION:**
- A. If a Proposer believes a specific section of its proposal to be confidential, the Proposer is to mark the page(s) "confidential" and isolate the pages marked confidential in a specific and clearly labeled section of its proposal response. The Proposer is to include a written statement as to the basis for considering the marked pages confidential.
  - B. The information identified by the person as confidential shall not be disclosed until the City makes a written determination.
  - C. The City shall review the statement and information and shall determine in writing whether the information shall be treated as confidential.
  - D. If the City determines to disclose the information, the City shall inform the Proposer in writing of such determination.
  - E. After award of a contract, proposal responses shall be considered a matter of public record and subject to disclosure. Materials submitted by Proposers shall become the property of the City unless otherwise requested at the time of submission. Materials identified as confidential by the Proposer will be reviewed by the City Purchasing Office which shall make a determination as to whether the information is disclosable. Generally, information submitted in response to this RFP is considered a matter of public record and subject to disclosure pursuant to the Arizona Public Records Law.
- 21. AUTHORIZED CHANGES:** The City reserves the right at any time to make changes in any one or more of the following: a) methods of shipment or packing; b) place of delivery; and c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both.

Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

**22. SAMPLES:** Upon request, Proposers may be required to furnish a sample of the goods and/or service to be provided. Submission of a sample by a Proposer shall constitute an express warranty that the whole of the goods and/or service shall conform to the sample submitted. All samples submitted by a Proposer shall become the property of the City for testing purposes and/or future comparison at no charge unless designated otherwise by the Proposer. Samples not destroyed by testing or which are not retained for future comparison shall be returned upon request at Proposer's expense.

**23. PRE-PROPOSAL CONFERENCE:** A prospective Proposers' conference may be held at the City's sole discretion. If scheduled, the date and time of this conference will be indicated on the cover page of this document.

The purpose of this conference shall be to clarify the contents of this RFP Package in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this RFP Package or any apparent omission or discrepancy should be presented to the City at this conference. The City shall then determine the appropriate action necessary, if any, and issue a written amendment to the RFP. Oral statements or instructions shall not constitute an amendment to this RFP.

**24. DISCUSSIONS AND REVISIONS TO PROPOSAL:** Discussions may be conducted with responsible Proposers who submit proposals determined to be reasonably susceptible of being selected for award. Such discussions may facilitate the exchange of pertinent information to enable a more complete understanding of, and responsiveness to, the solicitation requirements. Should the City elect to call for 'best and final' offers, Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Proposers. The purposes of such discussions shall be to:

- A. Determine in greater detail such Proposers' qualifications, and
- B. Explore with the Proposers, the Scope of Services, the Proposers' proposed method of performance, and the relative utility of alternate methods of approach;
- C. Determining whether the Proposers have the necessary personnel and facilities to perform within the required time;
- D. Agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity and nature of such services.

**25. COOPERATIVE PURCHASING AGREEMENTS:** A contract resulting from this RFP may be extended for use by the members of the Flagstaff Alliance for the Second Century. An Intergovernmental Agreement (IGA) has been executed between the City, Coconino County Community College District, Northern Arizona University, Coconino County and Flagstaff Unified School District. The contract may also be extended to other municipalities and government agencies of the state. Any such usage by other municipalities and government agencies must be in accordance with the ordinance, charter and/or rules and regulations of the respective political entity. Any public agencies not identified within this RFP who wish to cooperatively use the contract are subject to the approval of Proposer.

The City is also a member of S.A.V.E. (Strategic Alliance for Volume Expenditures), which consists of numerous municipalities, counties, universities, colleges, schools and other Arizona State agencies. These cooperatives are achieved through Intergovernmental Agreements (IGAs) in accordance with provisions allowed by A.R.S. §11-952 and §41-2632. The IGAs permit purchases of material, equipment and services from Proposers at the prices, terms and conditions contained in contracts originated between any and all of these agencies and the Proposer(s) contract, as awarded.

Is your firm willing to offer the goods and services solicited under the terms and conditions of this solicitation to other members of the Flagstaff Alliance for the Second Century and S.A.V.E. under the same pricing, terms and conditions?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

- 26. FINANCIAL STATUS:** All Proposers shall make available upon request a current audited financial statement, a current audited financial report, or a copy of a current federal income tax return. Failure or refusal to provide this information within five (5) business days after communication of the request by the City shall be sufficient grounds for the City to reject a proposal, and/or to declare a Proposer non-responsive or non-responsible.

If a Proposer is currently involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Proposer under federal bankruptcy law or any state insolvency law, the Proposer must provide the City with that information as part of its proposal. The City may consider that information during evaluation of the proposal.

By submitting a proposal in response to this solicitation, Proposer agrees that, if, during the term of any contract it has with the City, it becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Proposer under federal bankruptcy law or any state insolvency law, Proposer shall immediately provide the City with a written notice to that effect, and shall provide the City with any relevant information it requests to determine whether the Proposer will meet its obligations to the City.

- 27. GOVERNING LAW and JURISDICTION:** This solicitation shall be governed by and construed in accordance with the laws of the State of Arizona.

- 28. SUBSEQUENT PURCHASES:** The City, with the consent of the successful Proposer(s), reserves the right to purchase additional items as listed in this proposal, if Proposer is willing to offer the same terms and conditions as submitted in this proposal, for a period of twelve (12) months from the date of approval.

- 29. POINT OF CONTACT:** The proposal must indicate the name of one individual who the City is to contact with any questions or clarifications in regards to the proposal.

- 30. ON-SITE INVESTIGATION:** Proposers are strongly encouraged to view all of the City's facilities that may be referenced in the Scope of Work prior to submitting their proposal. The Proposer shall be responsible for examining the facility sites and comparing it with the descriptions and specifications, to have carefully examined all of the RFP Package, including the sample contract and to have satisfied themselves as to the conditions under which the work is to be performed before submitting a proposal and entering into the contract.

No allowance shall subsequently be made on behalf of Proposer on account of an error on its part or its negligence or failure to become acquainted with the conditions of the site, or surrounding areas.

- 31. CONTRACT ADMINISTRATION:** To help insure contract compliance, a Contract Administration Process will be an integral part of the contract. This Contract Administration Process is an audit and feedback system and will be in addition to any of the other policies and procedures contained herein. The Contract Administration Process is a total quality management tool that empowers the users to monitor and assure contract compliance. The Proposer should know during the proposal process that the successful Proposer will be closely monitored for contract compliance. No additional cost is anticipated to be incurred by the successful Proposer by the presence of the Contract Administration Process, as long as contract compliance is maintained.

All changes or amendments to the contract are to be in writing, authorized by the Purchasing Director, approved by the City Council, and signed by authorized representatives of the parties.

- 32. CONTRACT TYPE:** Firm Fixed Fee. Initial contract term shall be for one (1) year.

- 33. CONTRACT RENEWAL:** The City reserves the right to unilaterally extend the period of the contract for ninety (90) days beyond the stated expiration date. In addition, by mutual written consent, the contract may be renewed for supplemental periods of up to four (4) additional one (1) year terms.

- 34. OFFER ACCEPTANCE PERIOD:** In order to allow for an adequate evaluation, the City requires an offer in response to this solicitation to be valid and irrevocable for ninety (90) days after the opening time and date.

**35. CONTACT WITH CITY EMPLOYEES AND CONTRACTORS**

All persons and/or firms that are interested in this project (including the firm's employees, representatives, agents, lobbyists, attorneys, and sub-contractors) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the evaluation/selection or creating bias in the evaluation/selection process with any person who may play a part in the evaluation/selection process. This includes but is not limited to the evaluation panel, City Council Members, City Manager, Assistant City Manager(s), Deputy City Manager(s), Department Directors or other staff. This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public, and to protect the integrity of the selection process. All contact on this selection process should be addressed to the authorized representative identified on Page One of this document.

## PROJECT DESCRIPTION/BACKGROUND

The City of Flagstaff is currently soliciting proposals for a web-based solution that will be used to measure and manage employee performance. The solution shall improve the efficiency of Employee Performance Management and provide easy access to Employee Performance Management information. The City of Flagstaff uses an Employee Performance Management system for 760 employees that involve documenting employee competencies, priorities and development plans. The system involves multiple performance review cycles varying by work group and off-cycle reviews.

Current Computing Environment – Windows desktop environment currently running an internet explorer browser. The Human Resources Information/Payroll system is currently H.T.E. Sunguard and the City will be migrating to a Harris ERP. The Harris ERP Human Resources Information/Payroll system is web based and runs on a windows server environment utilizing Microsoft SQL server database.

## SCOPE OF WORK

1. Scope of Services including the response to the Employee Performance Management requirements with proposed implementation and support plan. The vendor should address the following areas in their response.
  - a. A detailed, phased implementation and deployment plan including an explanation of the role of vendor and City staff members (team structure, key personnel functions, etc) with estimated time commitment and overall timeline.
  - b. Development of future business process/workflow designs.
  - c. A strategy to provide a complete range of system testing to verify performance.
  - d. System acceptance testing including City developed test scripts.
  - e. A detailed training plan and training materials electronically.
  - f. A set of documentation including project management materials, status reports, issues log and risk mitigation assessment electronically.
  - g. A detailed set of policies and procedures.
  - h. Software licensing plan, including cost and licensing options.
  - i. Ability to download or extract data onto City owned servers.
2. Please answer yes or no to each of the following questions regarding the functionality of the Performance Management solution:

	Function	Yes or No
	Ability to be flexible, configurable and easy to use by non-technical users	
		Yes or No

	Supports multiple performance review cycles by position or work group	
	Supports off-cycle performance reviews	
	Ability to create multiple review forms	
	Ability to support multiple review forms	
	Ability to secure information via supervisor hierarchical structure as dictated by the City's organizational structure	
	Ability to calculate overall performance scores	
	Ability to use 360 evaluations for certain levels within the organization	
	Ability to assign access to certain employees for peer evaluations	
	Ability to electronically notify supervisors and employees that an evaluation is due or approval is needed via email using Microsoft Exchange	
	Ability to electronically approve performance evaluations	
	Ability for employees to submit pre-review information electronically to supervisor	
	Ability for employees to submit post-review information electronically and confidentially to Human Resources	
	Ability for Human Resources to lock the evaluation once it has been completed	
	Ability to flag the supervisor's word choice and suggest the supervisor finds a more appropriate alternative	
	Ability of the word library to grow or for Human Resources to add words	
	Ability to spell check	
	Ability to see performance history	

	Ability to transfer employee performance from one supervisor to another supervisor	Yes or No
	Ability to allow more than one supervisor to access and rate the employee's performance	
	Ability to upload supporting documentation	
	Ability to print completed performance evaluations	
	Ability to create tailored processes for employees who do not have regular access to a computer	
	Configuration of quantitative and qualitative goals	
	Configuration of individual, group and organization wide goals	
	Access to goal library for supervisor and employees	
	Ability to mark certain goals private between supervisor and employee	
	Ability to track progress of goals on an ongoing basis by supervisor and employee	
	Ability to create reports of performance reviews both individually and as a work group	
	Access to a competency library	
	Ability to configure City specific competency library	
	Ability to assign competencies by individual and work group	
	Ability to create a standalone development plan	
	Ability to create a standalone corrective action plan	
	Ability to track progress of a corrective action plan with varying timeframes	
	Ability to monitor trends and/or history regarding Employee Performance Management for individual employees, sections, divisions and/or organization wide.	

	Ability to provide technical support Monday through Friday from 6:00 a.m. to 6:00 p.m. (If results in additional cost, please specify in the Pricing section.)	
	Ability in the future for a bi-directional interface between the Employee Performance Management system and the Harris ERP Human Resources Information/Payroll system so that results of the Employee Performance Management review process transfer to the Payroll system and merit pay is automatically processed	
	Compatibility with mobile Apple devices utilizing Safari as the browser	
	Ability to conduct compensation management and/or pay for performance within the Employee Performance Management system	
	Ability to implement by June 30, 2014	

## PROPOSAL FORMAT/SUBMITTAL

**FORMAT AND CONTENT:** To aid in the evaluation, all proposals should follow the same general format. The proposals are to be submitted in binders and have sections tabbed with proposal information as outlined in the categories/criteria below.

The Evaluation Committee will evaluate responses to this RFP based on the information provided in each of the proposer's proposal responses and interviews, if conducted, as necessary. To allow for a standard basis of evaluation, all proposal responses shall follow the format outlined below. Proposers should use recycled paper (minimum 50% post consumer waste) and double-sided printing for the proposal submitted. An original and five (5) copies are to be submitted. Proposal responses should be organized with sections/dividers as follows:

Proposer shall provide packaging/packing materials that meet at least one of, and preferable all of the following criteria:

- Made from 100% post-consumer recycled materials
- Non-toxic
- Bio-degradable
- Reusable
- Recyclable

### Page Limitation:

The Proposal shall be limited to a maximum of 20 pages, including the Cover Letter, Title Page, Proposal, Matrix, and Pricing Fee/Budget. The following items will not be counted as part of the page limitation: References, Proposer's Questionnaire, Non-Collusion Affidavit. The City may consider any Proposal which exceeds the page limitation as non-responsive.

### Cover Letter:

The cover letter should contain the following relevant data as a minimum:

- Statement indicating response to: Online Performance Management
- RFP No. 2014-30
- Submittal date
- Company name (and logo if desired)
- Other information/graphics as desired

### Title Page:

Proposers shall include their company name, local and corporate address, e-mail/website address(es), phone and fax numbers and name(s) of principals.

### A. Organization

Describe your organization, date founded, ownership, organizational chart and other business affiliations.

**B. Experience and Qualifications**

1. Proposers shall indicate the organization's years of experience with municipal government organizations providing Employee Performance Management solutions and success with similar projects.
2. Proposers shall provide examples of project manager and team professional lead roles on similar projects with proposed teams' resumes/credentials indicating the project manager's previous experience with Employee Performance Management solutions and related education and certifications supportive of planning and concept design.
3. Relevant industry awards received within the last three (3) years.

**C. Presented Approach and Schedule**

1. Proposers to describe presented approach, description of major elements of the project and process including the means by which model run permutations are managed.
2. Proposers to describe approach to meeting project objectives such as previous public sector Employee Performance Management experience.
3. Proposers to present creativity and problem solving in developing and assessing public sector Employee Performance Management.
4. Proposers to present work load and firm capacity during project schedule.

**D. Pricing Fee/Budget**

1. Financial Statements demonstrating the financial viability of the organization.
2. Proposers to present total project cost/budget including the breakdown of the cost for implementation, ongoing maintenance and/or related fees and technical support. Also, clearly outline what the anticipated costs will be over the next five (5) years.
3. Proposers to describe and submit a detailed hours by team member and task (job cost report).

**E. References**

Proposer shall list up to five (5) references (Proposer shall use the Proposer's References Form on pages 22-23) from organizations to which your firm has provided Employee

Performance Management solutions in the past two (2) years. Please include the following information for each reference:

1. Organization
2. Contact Name
3. Address
4. Phone
5. Email
6. Implementation Date
7. Description of the Employee Performance Management Implementation
8. Partners Utilized

## EVALUATION CRITERIA

Proposals will be evaluated based on the Proposer's ability to meet the performance requirements and Scope of Work/Specific Terms of this RFP Package. This section provides a description of the evaluation criteria that will be used to evaluate the Proposals. To be deemed responsive, it is important for the Proposer to provide appropriate detail to demonstrate satisfaction of each criterion and compliance with the performance provisions outlined in this RFP Package.

The following evaluation criteria will be used by the City of Flagstaff's evaluation committee for the selection of a Proposer to provide Online Performance Management for the City's HR Department. The evaluation committee will review the initial proposal responses and score them according to the criteria listed below. Depending on the total number of proposal responses to this RFP, the committee may "short list" the proposers receiving the highest scores and conduct formal discussions/presentations to make a final evaluation. After final evaluation of proposal responses, the City may narrow the total number of responses down to approximately three (3) and may request "Best and Final" offers.

The following evaluation criteria will be used to determine the award of the contract(s):

### **EVALUATION CRITERIA**

---

1. Responsiveness and quality of the response as outlined in the Request for Proposal
2. Solution capabilities and ability to meet the requirements outlined in this (RFP)
3. Feasibility, timeliness, and quality of software implementation schedule
4. Demonstrated experience and ability to implement an Employee Performance Management system
5. Price

The City may award the contract to the proposer whose proposal is most advantageous to the City. The City reserves the right to reject any proposal for being non-responsive and will consider the responsibility of the Proposer as set forth in the City of Flagstaff Procurement Code Manual. The City reserves the right to reject any and all proposals, or any part thereof; to accept any proposal or any part thereof; or to waive any informality when it is deemed to be in the City's best interest.

## PROPOSER'S REFERENCES

1. **REFERENCES.** Proposers shall submit references for municipal projects that are comparable in size, complexity, and scope of work sought by this RFP.
- The references should also demonstrate the Proposer's experience with providing Operations Analysis Micro-Simulation Modeling being proposed. The histories of such projects that they have completed, firm resumes and resumes of key personnel should also be included, as well as other information believed to demonstrate the indicated types of experience.
  - All references should include the name, title, telephone number of both the current owner of the project and the owner of the project at time of work effort. Specific reasons for using the reference must also be provided.

Firm/Government Agency Name:	
Contact Person:	Phone:
Title:	Fax:
Address:	E-Mail Address:
	Reason for Selecting as Reference:
Project Size, Complexity, Scope and Duration:	

  

Firm/Government Agency Name:	
Contact Person:	Phone:
Title:	Fax:
Address:	E-Mail Address:
	Reason for Selecting as Reference:
Project Size, Complexity, Scope and Duration:	

  

Firm/Government Agency Name:	
Contact Person:	Phone:
Title:	Fax:
Address:	E-Mail Address:
	Reason for Selecting as Reference:

Project Size, Complexity, Scope and Duration:	
Firm/Government Agency Name:	
Contact Person:	Phone:
Title:	Fax:
Address:	E-Mail Address:
	Reason for Selecting as Reference:
Project Size, Complexity, Scope and Duration:	
Firm/Government Agency Name:	
Contact Person:	Phone:
Title:	Fax:
Address:	E-Mail Address:
	Reason for Selecting as Reference:
Project Size, Complexity, Scope and Duration:	

## PROPOSER QUESTIONNAIRE

Company Legal/Corporate Name: \_\_\_\_\_

Doing Business As (if different than above): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ - \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_ Website: \_\_\_\_\_

Taxpayer Identification Number: \_\_\_\_\_

Remit to Address (if different than above):

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ - \_\_\_\_\_

### **Contact for Questions about this proposal:**

Name: \_\_\_\_\_ Fax: \_\_\_\_\_

Phone: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

### **Sales/Use Tax Information (check one):**

☐ Proposer is located outside Arizona (The City will pay use tax directly to the AZ Dept of Revenue)

☐ Proposer is located in Arizona (The Offeror should invoice the applicable sales tax and remit to the appropriate taxing authorities)

State Sales Tax Number: \_\_\_\_\_

City Sales Tax Number: \_\_\_\_\_ City of: \_\_\_\_\_, AZ

☐ Certified Small Business Certifying Agency: \_\_\_\_\_

☐ Certified Minority, Woman or

Disadvantaged Business Enterprise Certifying Agency: \_\_\_\_\_

Credit References: Provide the name and telephone number of at least three organizations that your company deals with on an on-going basis.

A. Company Name \_\_\_\_\_

Contact & Phone Number \_\_\_\_\_

B. Company Name \_\_\_\_\_

Contact & Phone Number \_\_\_\_\_

C. Company Name\_\_\_\_\_

Contact & Phone Number\_\_\_\_\_

Insurance - Name of insurance agent that will provide the specified coverage's.

\_\_\_\_\_

List any other information that may be helpful in determining your qualifications including sub-contract to be utilized, if any.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Additional Information required:

- a. Year firm was established (include former firm names and year each applied).
- b. Identify the country and state in which the firm was incorporated or otherwise organized.
- c. Type of ownership and parent company and subsidiaries, if any. Include dates of any corporate mergers and/or acquisitions including all present and former subsidiaries with dates of any and all re-structuring since the founding date.
- d. A narrative description and organization chart depicting the management of the Proposer's organization and its relationship to any larger business entity.
- e. A description of the overall operations of the Proposer, the number and scope of other projects currently ongoing or set to begin in the near future.
- f. A narrative description of Proposer's familiarity with and prior operating experience in Arizona or the Southwestern United States.
- g. Provide, at Proposer's option, any additional information not specifically listed above which demonstrates the qualifications of the Proposer to perform the scope of work specified in this RFP.

## EXCEPTIONS, CONFIDENTIAL AND ADDITIONAL MATERIALS

Proposers shall indicate any and all exceptions taken to the provisions or specifications in this solicitation document.

**Exceptions (mark one):**

- ☐ No exceptions
- ☐ Exceptions taken (Describe) Attach additional pages if needed)

**Confidential/Proprietary Submittals (mark one):**

- ☐ No confidential/proprietary materials have been included with this offer
- ☐ Confidential/Proprietary materials included. Proposers should identify below any portion of their offer deemed confidential or proprietary (see Standard Terms and Conditions, section **titled Confidential Information**). Identification of such materials in this section does not guarantee that disclosure will be prevented but that the item will be subject to review by the Proposer and the City prior to any public disclosure. Requests to deem the entire offer as confidential will not be considered.

**Additional Materials submitted (mark one):**

- ☐ No additional materials have been included with this offer
- ☐ Additional Materials attached (Describe. Attach additional pages if needed)

## NON-COLLUSION AFFIDAVIT

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

\_\_\_\_\_, affiant,

states that I am the \_\_\_\_\_  
(Title)

of \_\_\_\_\_  
(Contractor/Proposer)

and I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this bid.

I state that:

1. The price(s) and amount of this bid has been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder.
2. Neither the price(s) nor the amount of this bid, and neither the approximate prices(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening.
3. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
4. The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
5. \_\_\_\_\_, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

\_\_\_\_\_  
\_\_\_\_\_  
(Title)

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_  
Signature of Notary Public

**OFFER**

**TO THE CITY OF FLAGSTAFF:**

The undersigned hereby offers and agrees to furnish the material, service, or construction in compliance with the RFP Package. Signature also certifies understanding and compliance with "Certification" as defined in Article 1 of the "Standard Terms and Conditions" of this Agreement.

For clarification of this offer, contact:

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

\_\_\_\_\_  
Signature of Person Authorized to Sign Offer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_

## **ATTACHMENT A**

### **ONLINE PERFORMANCE MANAGEMENT**

#### **CITY OF FLAGSTAFF and**

\_\_\_\_\_

This Agreement for a City of Flagstaff for Online Performance Management ("Agreement") is made by and between the City of Flagstaff ("City"), a municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, and \_\_\_\_\_, with an office at \_\_\_\_\_ ("Provider"), effective as of the date written below.

#### **RECITALS**

- A. The City desires to enter into this Agreement for Online Performance Management; and
- B. Provider has available and offers to provide the personnel necessary to organize and provide said services in accordance with this Agreement;

For the reasons recited above, and in consideration of the mutual covenants contained in this Agreement, the City and Provider agree as follows:

#### **1. SERVICES TO BE PERFORMED BY PROVIDER**

Provider agrees to provide the services, as set forth in the Request for Proposals No. 2014-30 and the Provider's proposal as approved by the City as set forth Exhibit "A" attached hereto and hereby incorporated as part of this Agreement and adopted by reference ("Services").

#### **2. COMPENSATION OF PROVIDER**

The City agrees to make payment, in the amount of \$\_\_\_\_\_ to Provider to render the Services

#### **3. RIGHTS AND OBLIGATIONS OF PROVIDER**

3.1 Independent Contractor. The parties agree that Provider performs specialized services and that Provider enters into this Agreement with the City as an independent contractor. Nothing in this Agreement shall be construed to constitute Provider or any of Provider's agents or employees as an agent, employee or representative of the City. As an independent contractor, Provider is solely responsible for all labor and expenses in connection with this Agreement and for any and all damages arising out of Provider's performance under this Agreement. Provider is not obligated to accept all requests for services, depending on circumstances with other work being performed for other clients.

3.2 Provider's Control of Work. All Services to be provided by Provider shall be performed in a satisfactory manner as determined by the City in accordance with this Agreement. Provider shall furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Agreement. Provider shall be responsible for and in full control of the work of all such personnel.

3.3 Reports to the City. Although Provider is responsible for control and supervision of work performed under this Agreement, the services provided shall be acceptable to the City and shall be

subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision shall include, but not be limited to, all reports if requested by the City to be provided by Provider to the City and the right of the City, and the right of the City to audit Provider's records.

3.4 Compliance with All Laws. Provider shall comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Agreement. Any provision required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement shall be deemed inserted, whether or not such provisions appear in this Agreement.

#### **4. NOTICE PROVISIONS**

Notice. Any notice concerning this Agreement shall be in writing and sent by certified or registered mail as follows:

To the City's Authorized Representative:

To Provider:

Shannon Anderson  
Human Resources Manager  
City of Flagstaff  
211 W. Aspen  
Flagstaff, Arizona 86001

#### **5. INDEMNIFICATION**

To the fullest extent permitted by law, Provider shall indemnify, defend, save and hold harmless the City of Flagstaff and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Provider or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Provider to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Provider from and against any and all claims. It is agreed that Provider shall be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Provider shall waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by Provider for the City.

#### **6. INSURANCE**

Provider and subcontractors, if any, shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Provider, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect Provider from liabilities that may arise out of the performance of the work under this Agreement by Provider, its agents, representatives, employees or subcontractors and Provider is free to purchase additional insurance as may be determined necessary.

**A. Minimum Scope and Limits of Insurance.** Provider shall provide coverage at least as broad and with limits of liability not less than those stated below.

1. Automobile Liability - Any Auto or Owned, Hired and Non-Owned Vehicles  
(Form CA 0001, ed. 12/93 or any replacement thereof.)  
Combined Single Limit Per Accident \$1,000,000  
for Bodily Injury and Property Damage
2. Professional Liability \$2,000,000
3. Commercial General Liability \$1,000,000

**B. SELF-INSURED RETENTIONS/DEDUCTIBLES:** Any self-insured retentions and deductibles must be noted to the City. However, the Proposer shall be solely responsible for any self-insured and/or deductibles associated with the Proposer's insurance coverage.

**C. OTHER INSURANCE REQUIREMENTS:** The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages:
  - a. The City of Flagstaff, its officers, officials, and employees are additional insureds with respect to liability arising out of: activities performed by, or on behalf of, the Provider; including the City's general supervision of the Provider; products and completed operations of the Provider; and automobiles owned, leased, hired or borrowed by the Provider.
  - b. The Provider's insurance shall contain broad form contractual liability coverage.
  - c. The Provider's insurance coverage shall be primary insurance with respect to the City, its officers, officials, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess to the coverage of the Provider's insurance and shall not contribute to it.
  - d. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - e. Coverage provided by the Provider shall not be limited to the liability assumed under the indemnification provisions of this contract.
  - f. The policies shall contain a waiver of subrogation (not including auto) against the City, its officers, officials, and employees for losses arising from work performed by the Provider for the City.

2. Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Provider for the City.

- 6.1 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then at least ten (10) days prior notice shall be given to the City. Such notice shall be sent directly to:

**Rick Compau, C.P.M., CPPO, CPPB**  
**Purchasing Director**  
**City of Flagstaff, Purchasing Division**  
**211 W. Aspen Ave.**  
**Flagstaff, Arizona 86001**

- 6.2 Acceptability of Insurers. Insurance shall be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A- VII, or receiving prior approval by the City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect Provider from potential insurer insolvency.
- 6.3 Verification of Coverage. Prior to commencing work or services, Provider shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements shall be received and approved by the City before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall constitute a material breach of contract.

All certificates required by this Agreement shall be sent directly to **Rick Compau, C.P.M., CPPO, CPPB, Purchasing Director, City of Flagstaff, Purchasing Division, 211 W. Aspen Ave., Flagstaff, AZ. 86001.** The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to request and receive within ten (10) days, complete, certified copies of all insurance policies required by this Agreement at any time. The City shall not be obligated, however, to review same or to advise Provider of any deficiencies in such policies and endorsements, and such receipt shall not relieve Provider from, or be deemed a waiver of the City's right to insist on, strict fulfillment of Provider's obligations under this Agreement.

- 6.4 Subcontractors. Providers' certificate(s) shall include all subcontractors as additional insureds under its policies **or** Provider shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

- 6.5 Approval. Any modification or variation from the insurance requirements in this Agreement shall be made by the City Attorney's office, whose decision shall be final. Such action shall not require a formal amendment to this Agreement, but may be made by administrative action.

## **7. DEFAULT AND TERMINATION**

### **7.1 Events of Default Defined**. The following shall be Events of Default under this Agreement:

7.1.1 Any material misrepresentation made by Provider to the City;

7.1.2 Any failure by Provider to perform its obligations under this Agreement including, but not limited to, the following:

7.1.2.1 Failure to commence work at the time(s) specified in this Agreement due to a reason or circumstance within Provider's reasonable control;

7.1.2.2 Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time;

7.1.2.3 Failure to perform the work in a manner reasonably satisfactory to the City;

7.1.2.4 Failure to promptly correct or re-perform within a reasonable time work that was rejected by the City as unsatisfactory or erroneous;

7.1.2.5 Discontinuance of the work for reasons not beyond Provider's reasonable control;

7.1.2.6 Failure to comply with a material term of this Agreement, including, but not limited to, the provision of insurance; and

7.1.2.7 Any other acts specifically stated in this Agreement as constituting a default or a breach of this Agreement.

### **7.2 Remedies**.

7.2.1 Upon the occurrence of any Event of Default, the City may declare Provider in default under this Agreement. The City shall provide written notification of the Event of Default and any intention of the City to terminate this Agreement. Upon the giving of notice, the City may invoke any or all of the following remedies in addition to any other remedies available at law:

7.2.1.1 The right to cancel this Agreement as to any or all of the services yet to be performed;

7.2.1.2 The right of specific performance, an injunction or any other appropriate equitable remedy;

7.2.1.3 The right to monetary damages;

7.2.1.4 The right to withhold all or any part of Provider's compensation under this Agreement;

7.2.1.5 The right to deem Provider non-responsive in future contracts to be awarded by the City; and

7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

7.2.2 The City may elect not to declare an Event of Default or default under this Agreement or to terminate this Agreement upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the City, and that if the City allows Provider to continue to provide the Services despite the occurrence of one or more Events of Default, Provider shall in no way be relieved of any of its responsibilities or obligations under this Agreement, nor shall the City be deemed to waive or relinquish any of its rights under this Agreement.

7.2.3 Any excess costs incurred by the City in the event of termination of this Agreement for default, or in the event the City exercises any of the remedies available to it under this Agreement, may be offset by use of any payment due for services completed before termination of this Agreement for default or the exercise of any remedies. If the offset amount is insufficient to cover excess costs, Provider shall be liable for and shall remit promptly to the City the balance upon written demand from the City.

## 8. GENERAL PROVISIONS

8.1 Headings. The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

8.2 Jurisdiction and Venue. This Agreement shall be administered and interpreted under the laws of the State of Arizona. Provider hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

8.3 Attorney's Fees. If suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.

8.4 Severability. If any part of this Agreement is determined by a court to be in conflict with any statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.

8.5 Assignment. This Agreement is binding on the heirs, successors and assigns of the parties hereto. This Agreement may not be assigned by either the City or Provider without prior written consent of the other.

8.6 Conflict of Interest. Provider covenants that Provider presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Provider further covenants that in the performance of this Agreement, Provider shall not engage any employee or apprentice having any such interest. The parties agree that this Agreement may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

8.7 Authority to Contract. Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder, and that it has taken all actions necessary to authorize entering into this Agreement.

8.8 Integration. This Agreement represents the entire understanding of City and Provider as to those matters contained in this Agreement, and no prior oral or written understanding shall be of any force or effect with respect to those matters. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.

8.9 Non-appropriation. In the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for payments to be made under this Agreement, the City shall notify Provider of such occurrence, and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. No payments shall be made or due to Provider under this Agreement beyond these amounts appropriated and budgeted by the City to fund payments under this Agreement.

8.10 RESERVED.

8.11 Compliance with Federal Immigration Laws and Regulations. Provider hereby warrants to the City that the Provider and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to its employees and A.R.S. §23-214(A) (hereinafter "Provider Immigration Warranty").

A breach of the Provider Immigration Warranty shall constitute a material breach of this Agreement and shall subject the Provider to penalties up to and including termination of this Agreement at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Provider or Subcontractor employee who works on this Agreement to ensure that the Provider or Subcontractor is complying with the Provider Immigration Warranty. Provider agrees to assist the City in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Provider and any of subcontractors to ensure compliance with Provider's Immigration Warranty. Provider agrees to assist the City in regard to any random verification performed.

The provisions of this Article must be included in any contract the Provider enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

8.12 Subcontractors. This Agreement or any portion thereof shall not be sub-contracted without the prior written approval of the City. No Subcontractor shall, under any circumstances, relieve Provider of its liability and obligation under this Agreement. The City shall deal through Provider and any Subcontractor shall be dealt with as a worker and representative of Provider. Provider assumes responsibility to the City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

8.13 Waiver. No failure to enforce any condition or covenant of this Agreement by the City shall imply or constitute a waiver of the right of the City to insist upon performance of the condition or covenant, or of any other provision of this Agreement, nor shall any waiver by the City of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach under this Agreement.

8.14 Business Operations in Sudan/Iran. In accordance with A.R.S. § 35-397, the Provider certifies that the Provider and its affiliates and subsidiaries do not have scrutinized business operations in Sudan or Iran. If the City determines that the Provider’s certification is false, the City may impose all legal and equitable remedies available to it, including but not limited to termination of this Agreement.

9. DURATION

This Agreement shall become effective on and from the day and year executed by the parties, indicated below, and shall continue in force for an initial term of one (1) year, beginning [ , 2014 through , 2015], unless sooner terminated as provided above. Upon mutual agreement between the City and Provider, this Agreement may be renewed for a maximum of four (4) additional one (1) year terms, upon mutual agreement from both parties.

City of Flagstaff

Provider

\_\_\_\_\_  
Kevin Burke, City Manager

\_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

Date of Execution: \_\_\_\_\_